

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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IN THE MATTER OF IMPACT OF THE CLOSURES
OF FOSSIL-BASED GENERATION PLANT ON
IMPACTED COMMUNITIES.

Docket No. E-00000A-21-0010**CITIZEN GROUPS'
RESPONSES TO STAFF
RECOMMENDATIONS
REGARDING IMPACTS OF
COAL PLANT CLOSURES**

The undersigned Citizen Groups – Tó Nizhóní Ání, Diné C.A.R.E., Black Mesa Trust, and San Juan Citizens Alliance – appreciate the opportunity to provide feedback in response to Commission Staff recommendations on coal-impacted community transition, submitted to the Commission on July 28, 2021.¹ As grassroots organizations representing the very communities that this docket was meant to address, the Citizen Groups have a deeply invested and long-running interest in working cooperatively with the Commission to establish a framework for how Arizona utilities can meet their corporate obligations to assist the families, businesses and communities who feel the impacts of coal plant and mine closures most acutely. This docket was supposed to bring together stakeholders and use the latest thinking and policy options to help guide the Commission in its pursuit of creating a sound methodology for addressing this issue, which affects a number of Arizona communities. Unfortunately, the recommendations do nothing to further development of a sound Just and Equitable Transition (JET) policy.

For the reasons below, the Citizen Groups strongly urge the Commission to abandon the pretense that generic proceedings can serve as the foundation for addressing the immediate needs being felt by coal-impacted communities that are in dire need of transition support. Instead, the Commission should take advantage of proceedings already underway that include meaningful deliberation about utility obligations for helping coal-impacted communities land on their feet in light of the painful economic disruptions that happen when utility companies close coal plants and mines, often far earlier than anticipated. Utility rate cases provide an appropriate venue to hash out the details of to provide assistance related to specific plant retirements and their impacts to surrounding communities. Each utility, plant and impacted community bring unique circumstances to the table that can and should be considered in the context of a rate case.

¹ Commission Staff Report in Docket No. E-00000A-21-0010 (July 28, 2021), available at <https://docket.images.azcc.gov/E000014847.pdf?i=1628087848505>.

After the more than six months that Staff had to convene workshops, to solicit input from experts in the area of Just and Equitable Transition, to pull together the latest policies being used to address this critical issue in other states, and to craft a framework for the Commission to consider, there is nothing on the table to work with. The Staff recommendations presented to the Commission are consolidated in three brief paragraphs at the end of the report that can be summarized as:

- Seek federal assistance;
- Have utilities report quarterly on what they're doing; and
- Create a task force to study the matter further.

In no way can this be considered even a starting point for developing a sound coal-community transition policy. The recommendations are void of any meaningful solution that will provide direct and timely support to coal-impacted communities. They fail to recognize the urgency of support that is needed *now* to assist the Navajo Nation, the Hopi Tribe, and the Page area, all of which are still reeling from the economic disruptions caused by the retirement of Navajo Generating Station nearly two years ago – more than two decades earlier than planned. The only thing the Staff recommendations accomplish is continuing the trend of kicking the JET can down the road for someone else to address at a later time. Given the gravity of the economic impacts already caused by NGS's closure and the pending shut-down of additional plants owned and operated by Arizona utilities, the Commission should reject any suggestion that this problem can wait for yet more "study."

It is time for the Commission to begin acting on its previously stated commitments to JET. For nearly three years now, the Commission has been definitively recognizing that utilities have a corporate responsibility to assist communities in which their coal plants and associated coal mines are located when they close them down. In the previous APS rate case, Commission Staff supported the idea of "including a fund of several million dollars to assist the Navajo communities in transitioning to a future that is not heavily dependent upon coal," and the Administrative Law Judge determined that "it is reasonable to require APS to begin establishing a transition plan for Four Corners [Power Plant] and the impacted communities."² In its approval last September of amendments to APS's Tribal Energy Efficiency Program, the Commission explicitly recognized "*corporate obligations to support a just and equitable transition of communities impacted by early power plant closure*,"³ language that was then reaffirmed in the Commission's subsequent expansion of the program earlier this year.⁴ In creating this docket, the Commission noted that "*action must be taken, and soon, to mitigate the*

² Recommended Opinion and Order from the Hearing Division in Docket Nos. E-01345A-16-0036 and E-01345A-16-0123 (Nov. 27, 2018), available at <https://docket.images.azcc.gov/0000193887.pdf?i=1628267093777>.

³ Commissioner Kennedy Proposed Amendment No. 5 in Docket No. E-01345A-19-0088 (as approved by Commission at Sept. 23, 2020 open meeting) (emphasis added), available at <https://docket.images.azcc.gov/E000009058.pdf>.

⁴ Commissioner Kennedy Proposed Amendment No. 1 in Docket No. E-01345A-19-0088 (as approved by Commission at June 9, 2021 open meeting), available at <https://docket.images.azcc.gov/E000013922.pdf?i=1628296318326>.

*negative impacts of plant closures on tribal lands and elsewhere.”*⁵

And most recently, the Administrative Law Judge in the current APS rate case issued a thorough and well-reasoned recommended opinion and order in which she determined that “[i]n light of the negative externalities that have impacted [coal-impacted] communities, and the economic devastation that has come or is coming with closure of the coal-fired plants, it is just and reasonable for APS customers and shareholders to share the burden of transition assistance costs.”⁶ The order recognizes the harmful health and environmental impacts that a half century of coal burning and mining have had on Navajo, Hopi, and non-Tribal communities, as well as the devastating economic impacts of coal plant closures. Given the Commission’s established track record of acknowledging utility JET responsibilities, it’s difficult to conceive of a reason to keep putting off actual action on making such assistance available when solutions are available now.

The comments submitted in this docket clearly demonstrate that representatives from coal-impacted communities are counting on the Commission to confront JET issues in the name of actually providing JET assistance, not just continuing to talk about how much it is needed. With the Commission Staff refusing to convene workshops or meetings to gather input, the Citizen Groups convened their own town hall meetings. More than five dozen people – from the Navajo Nation and Hopi Tribe, from non-Tribal communities such as Page, from organized labor, and from impacted businesses – called in to the virtual events that were organized to share stories about how coal has impacted their lives, about the upheaval caused by coal plant closures, and about the need for utilities to step up and provide assistance to help their communities build post-coal economies.⁷ Dozens of additional comments to the same effect were also filed in the docket. The appetite for action *now* is undeniable, and it would be an abrogation of duty for the Commission to ignore the voices of so many whose futures are depending on the support available through swift action on JET.

The Commission has the authority to issue orders that will provide the much-needed JET support that has been recommended by the Citizen Groups and many others. As pointed out in comments submitted by a group of Arizona legislators, the state’s Constitution gives the Commission the power to regulate how utility corporations conduct business in ways that “preserve and protect public health, safety, convenience, and comfort.”⁸ Absent any conflicting regulation or statute – of which there are none – there is nothing preventing the Commission from acting swiftly to provide the JET support that coal-impacted communities are in dire and immediate need of receiving. Nor is there a reason to wait. Per the Commission’s final order in Docket No. E-01933A-I 9-0028, the Commission indicated that it expects JET issues for APS to be addressed

⁵ Decision 77856 in Docket No. E-01933A-19-0028 at 171 (Dec. 31, 2020) (emphasis added), available at <https://docket.images.azcc.gov/0000202798.pdf?i=1628295589372>.

⁶ Recommended Order and Opinion in Docket No. E-01345A-19-0236 at 170 (Aug. 2, 2021) (emphasis added), available at <https://docket.images.azcc.gov/E000014911.pdf?i=1628297128275>.

⁷ Docket No. E-00000A-21-0010.

⁸ Comments submitted in Docket No. E-00000A-21-0010 (July 12, 2021), available at <https://docket.images.azcc.gov/E000014911.pdf?i=1628297128275>.

in the current rate case.⁹

Not only does the Commission have the authority, there is substantial evidence demonstrating that providing JET support now will help unlock savings from early coal retirements that will more than offset any JET costs. For instance, the near-term closure of the Four Corners Power Plant could save ratepayers up to \$1.3 billion between 2023 and 2031.¹⁰ If those savings are realized, the JET proposal in the APS rate case would divert approximately one-tenth of the potential savings to pay for necessary transition costs related to plant closure. Yet, one of the obstacles to early closure, and thus to achieving these undeniable ratepayer benefits, has been ensuring that there is an adequate plan through which coal-impacted communities can transition to a clean energy economy. By quickly approving a robust JET package for each coal-impacted community, the Commission's leadership will catalyze hundreds of millions in ratepayer savings. In other words, having ratepayers contribute to JET funding will not increase bills but will help dramatically reduce them over the long-term.

In conclusion, while there were hopes that this generic docket would move the conversation forward on getting coal-impacted communities the support they so desperately need – and deserve – the effort put forward by Staff has not achieved any meaningful progress. Arizona is no further ahead on this matter than it was in January, when this docket opened. But that does not in any way mean there is not a solution. In fact, it is staring the Commission in the face. Utility rate cases provide a venue for deliberating the nuts and bolts of coal impacts, of financial considerations, of economics and utility obligations – basically all the factors that must be considered in developing a JET plan. There is no reason the Commission should not use the processes it already has in place to help coal-impacted communities land on their feet. It has the authority to do so. The need is there, and growing more acute. There is strong public support for the Commission to take action. And Staff seems uninterested in tackling this critical issue, to the detriment of those suffering the consequences of today's dramatically shifting energy landscape. More study will not help coal-impacted communities. Action will.

Power plants are closing, and that trend is not going to slow down. Utilities are retiring these plants because they are no longer economic to operate, which means that when they close them down, it is saving the company (and ratepayers) money. Coal-impacted communities have a right to share in that financial benefit. If the Commission uses the tools and exercises the power that it already has at its disposal through current rate cases, then it can help ensure that happens.

Respectfully submitted,

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⁹ See Decision No. 77856 at 172.

¹⁰ Testimony of David Schlissel in Docket No. E-01345A-19-0236 at 27 (Oct. 2, 2020), available at <https://docket.images.azcc.gov/E000009351.pdf?i=1628533348705>.

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